

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 31, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP456-CR

Cir. Ct. No. 2013CF125

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TROY M. PAULSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Calumet County:
JEFFREY S. FROEHLICH, Judge. *Affirmed.*

¶1 NEUBAUER, C.J.¹ Troy M. Paulson appeals from a judgment convicting him, upon his plea of no contest, of possession of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

tetrahydrocannabinols (THC) and drug paraphernalia. Paulson contends that the evidence the police found in his vehicle should have been suppressed because the police unreasonably prolonged the traffic stop while investigating the identity of the seventeen-year-old female passenger in Paulson's vehicle and trying to contact her parents until, twenty-five minutes after the initial stop, a police dog arrived on the scene and alerted the police to the presence of drugs in the vehicle. We disagree and affirm.

¶2 On Friday, August 9, 2013, at 11:53 p.m., Trevor Coleman, a patrol deputy with the Calumet County Sheriff's Department, was alone in a squad car patrolling the dead end of Fire Lane Eight, adjacent to a public boat launch, a secluded area where illegal activity such as underage drinking often occurs. Coleman noticed a vehicle without its lights on parked at an angle facing the boat launch and not in the parking spot's marked lines. A marked sign in the area prohibited parking between 10:00 p.m. and 5:00 a.m.; thus, the vehicle was parked illegally. As Coleman approached the vehicle in his squad car, the driver of the vehicle turned on its headlights, and Coleman noticed that the transmission was running. Coleman activated the emergency lights on his squad car and then exited his car a minute or two later.

¶3 As Coleman walked to the vehicle, he saw a male, later identified as Paulson, in the driver's seat and a female in the front passenger's seat. Coleman did not see them try to conceal anything as he approached the vehicle. Coleman asked the parties for identification, and Paulson was able to produce a Wisconsin driver's license, but the female had no identification. Paulson's identification indicated he was twenty-six years old. Both parties, Coleman observed, were "extremely nervous," beyond what he considered normal for a traffic stop. Paulson would not look Coleman in the face—he was looking down—and both his

hands and head were shaking. Coleman asked the female several times for her name and date of birth, but “[s]he was nervous and hesitant to give ... her name.” She was mumbling, and Coleman had to ask her to repeat herself. She indicated she was sixteen years old.² This placed her in violation of the County’s 11:00 p.m. curfew for children seventeen years of age and younger. *See* CALUMET COUNTY, WIS., CODE § 42-5 (2012).³ Coleman asked the female to give him her parents’ phone number so that he could contact them, as was his normal practice. The female, however, was hesitant to give Coleman her parents’ phone number and said that he would not be able to reach them because they were camping.

¶4 From outside the vehicle, Coleman observed a jacket in the backseat that was not just thrown in the back but “stuffed around the rear passenger seat as if it was pushed down to cover up or conceal something behind it or underneath it.” Coleman, however, could not tell what was underneath the jacket. Paulson and the female were not drinking or smoking inside the vehicle, and Coleman did not smell marijuana. However, Coleman was suspicious that the female was under the influence of a drug because of her “slurred speech and extreme nervousness.” Paulson and the female told Coleman that they worked together and had just gotten off work. Although Coleman was concerned about the ten-year difference

² In fact, the female was then seventeen years old.

³ CALUMET COUNTY, WIS., CODE § 42-5 (2012), provides as follows:

No child 17 years of age or under shall loiter, idle or remain and no parent or guardian shall knowingly permit his child or ward of such age to loiter, idle or remain in or upon any of the streets, alleys or public places in the County between 11:00 p.m. and 5:00 a.m.

between Paulson and the female, Coleman had not observed any kind of sexual activity as he approached the vehicle.

¶5 At 11:57 p.m., Coleman returned to his squad car. At that time, Coleman requested a dog from the K-9 unit. Coleman also requested backup because of the time of night and because there were two people in the stopped vehicle. The deputy who responded, Jacob Meyer, had the only portable fingerprint scanner in the County, which Coleman planned to use to confirm the female's identity. Coleman waited in his squad car for Meyer to arrive out of concern for his safety and because Meyer had the portable fingerprint scanner. In the meantime, Coleman ran Paulson's car and his criminal history, discovering that he had a history of drug offenses.

¶6 At 12:10 a.m., Meyer arrived on the scene. The female was removed from the vehicle and brought to Meyer's squad car where he interviewed her. Her fingerprints were checked with the portable fingerprint scanner, but the results were negative, likely because she had never been previously fingerprinted. At 12:18 a.m., the female returned to the stopped vehicle to retrieve her cell phone. Coleman brought the female back to his squad car and, at 12:19 a.m., told her he would call her mother. At 12:20 a.m., a dog from the K-9 unit and its handler arrived.

¶7 Coleman could not recall if he called the female's parents one time before Meyer arrived, but he knew "for sure" that he called them at least twice after Meyer arrived. In total, Coleman thought he called the female's parents three times, using both the female's cell phone and the squad phone. At the same time, Coleman requested that dispatch search for other numbers where the female's parents could be reached. Coleman left a voicemail for the female's parents and

waited for them to return his call. Asked if there was any reason for Paulson and his vehicle to remain there at this point, Coleman answered that he wanted to give the female's parents "enough time to listen to the voicemail" and to see if dispatch could find another phone number for her parents. Coleman, however, was never able to reach the female's parents.

¶8 If Coleman had been able to reach the female's parents and they had given permission for Paulson to drive her home, Coleman would have allowed it. The female had indicated that her address was within the county. Thus, if Coleman did not reach the minor's parents, it was likely that an officer was going to drive her home, which was what occurred.

¶9 Shortly after the canine arrived, it indicated that there was an illegal controlled substance in the stopped vehicle. The police conducted a search and discovered THC and drug paraphernalia.

¶10 The circuit court denied Paulson's motion to suppress the evidence uncovered during the search of his car. The court rejected Paulson's argument that the police had unnecessarily delayed the stop so that the dog could be brought to the scene. Recounting the time line, the court found that Coleman originally observed Paulson's vehicle at 11:53 p.m., Coleman had contact with the occupants at 11:55 p.m., made a call for the dog at 11:57 p.m., and Meyer arrived at 12:10 a.m. There were "[n]umerous attempts" to phone the female's parents. She retrieved her cell phone at 12:18 a.m., and, at 12:19 a.m., an attempt was made to call her parents. At 12:20 a.m., the dog arrived. The court found there was nothing that "would indicate that the officer was out there intentionally dragging his feet waiting for the dog to get there." Continuing, the court said,

this entire contact from the time that he first sees the vehicle until the dog is on the scene for the walk around and the sniff, it's only twenty-five minutes to start with, and given everything that was going on within that time frame, trying to get this portable scanner there, *trying to get accurate information and confirm that information from the juvenile*, making several attempts to contact parents and leave a reasonable time for them to call back in response, again, [t]he Court here does not believe that this was a situation where the deputy was going out of his way to slow things down and wait for the dog to get there. I think he was doing a number of things and I think diligently investigating the situation, and, again, it was entirely possible that somewhere along the line the parents were going to call in and say, yep, we know she's with him. She's supposed to be, and he will be taking her home, Officer. (Emphasis added.)

¶11 Subsequently, Paulson agreed to plead no contest to the counts charging him with possession of THC and drug paraphernalia. The court sentenced Paulson to consecutive terms of six months in jail on the possession of THC and sixty days on the possession of drug paraphernalia with the sentences stayed while Paulson served two years on probation. Paulson was to serve ninety days in jail as a condition of his probation with thirty of those days stayed. Judgment was entered and Paulson appeals.

¶12 Paulson concedes that the stop and initial seizure of his vehicle was reasonable. He also concedes that a dog sniff of the exterior of a vehicle during a lawful traffic stop does not violate the Wisconsin or United States Constitutions. *See Illinois v. Caballes*, 543 U.S. 405, 409 (2005); *State v. Arias*, 2008 WI 84, ¶24, 311 Wis. 2d 358, 752 N.W.2d 748. Instead, Paulson contends that the seizure of his vehicle became unreasonable because it was extended beyond what was necessary to effectuate the purpose of the stop, that being for Coleman to investigate his suspicion that the car was unlawfully parked and to ask Paulson and the female for their identification so that Coleman could run that information

for outstanding warrants. Once the female indicated that she was in violation of curfew and the parking violation had been resolved, or reasonably should have been resolved, then Paulson should have been free to go. In other words, after Coleman ran a background check on Paulson and issued him a warning or citation, or at least should have done so within a reasonable time frame, then Paulson should have been free to drive off while the female remained with Coleman who was likely going to drive her home. Since the original purpose of the stop had been resolved or should have been by the time the dog arrived, and reasonable suspicion was lacking to continue detaining Paulson, the dog sniff occurred during an unconstitutional seizure, and the evidence recovered from Paulson's car should have been suppressed.

¶13 The question of whether a defendant's right to be free from unreasonable searches and seizures was violated, contrary to the Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution, is a question of constitutional fact. See *State v. House*, 2013 WI App 111, ¶4, 350 Wis. 2d 478, 837 N.W.2d 645. The circuit court's findings of facts following the suppression hearing will be upheld unless clearly erroneous, but the application of constitutional principles to those facts is reviewed de novo. *State v. Vorburger*, 2002 WI 105, ¶32, 255 Wis. 2d 537, 648 N.W.2d 829.

¶14 The reasonableness of a traffic stop involves a two-part inquiry: first, whether the initial seizure was justified and, second, "whether subsequent police conduct was reasonably related in scope to the circumstances that justified the initial interference." *State v. Gammons*, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623; see *United States v. Sharpe*, 470 U.S. 675, 682 (1985). "[A]n investigative detention must be temporary and last no longer than is

necessary to effectuate the purpose of the stop.” *Sharpe*, 470 U.S. at 684 (citation omitted); see *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015). In the context of a traffic stop, “the tolerable duration of police inquiries” is determined by the mission of the seizure, the mission being “to address the traffic violation that warranted the stop ... and [to] attend to related safety concerns.” *Rodriguez*, 135 S. Ct. at 1614 (citation omitted).⁴ Besides “determining whether to issue a traffic ticket, an officer’s mission includes ‘ordinary inquiries incident to [the traffic] stop,’” such as checking the driver’s license, determining whether the driver has any outstanding warrants, and inspecting the vehicle’s registration and proof of insurance. *Id.* at 1615 (citation omitted). In addition, asking a passenger for identification and running a check on that information are “actions ... reasonably related in scope to the purpose of a traffic stop, and no further justification is required.” *Gammons*, 241 Wis. 2d 296, ¶13; see *Rodriguez*, 135 S. Ct. at 1613, 1624 (Alito, J., dissenting) (noting that the majority recognized that asking passenger for driver’s license and completing a records check on him was “properly part of the traffic stop”). Once the tasks tied to the traffic infraction are completed, or within the time it should have reasonably taken to complete them, the authority for the seizure ends. *Rodriguez*, 135 S. Ct. at 1614; see *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) (stating that “[t]he temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop,” and the stop “[n]ormally” ends “when the police have no further need to control the scene, and inform the driver and passengers they are free to leave”). During this time when the officer is performing tasks tied to the

⁴ The circuit court rendered its decision prior to the United States Supreme Court’s decision in *Rodriguez v. United States*, 135 S. Ct. 1609 (2015).

traffic infraction, the officer may also conduct “certain unrelated checks,” such as a dog sniff, provided those unrelated checks do not “measurably extend the duration of the stop.” *Rodriguez*, 135 S. Ct. at 1615 (citation omitted).

¶15 Here, after the initial interaction with Paulson and the female, Coleman, at 11:57 p.m., returned to his squad car where he requested a K-9 unit and backup. Coleman did not need any justification in order to request the K-9 unit. *See State v. Salonen*, 2011 WI App 157, ¶9, 338 Wis. 2d 104, 808 N.W.2d 162. Coleman requested backup out of concern for his safety—because he was working alone, dealing with two persons in a remote location late at night, both of whom appeared extremely nervous, and appeared to be hiding something in the backseat of the car. While waiting, Coleman learned that Paulson had a history of drug offenses. Additionally, Coleman’s backup, Meyer, had the only portable fingerprint scanner, which, since the female had no identification, could potentially confirm her claimed identity. *See Maryland v. Wilson*, 519 U.S. 408, 413 (1997) (“[T]he fact that there is more than one occupant of the vehicle increases the possible sources of harm to the officer.”); *Sharpe*, 470 U.S. at 686-87 (cautioning courts against engaging in a post hoc evaluation of police conduct in an attempt to imagine some alternative means by which the objectives of the police might have been accomplished). Both of these actions—attending to safety concerns, while trying to identify the passenger—were “reasonably related in scope to the purpose of a traffic stop.” *Gammons*, 241 Wis. 2d 296, ¶13; *see Rodriguez*, 135 S. Ct. at 1614-15 (noting that “[t]raffic stops are especially fraught with danger to police officers” (citation omitted)).

¶16 Paulson contends that at this point, once the female had provided her date of birth, placing her in violation of the County Code, and Coleman had checked Paulson’s information, “Paulson should have been free to go.” Coleman,

however, still needed to confirm the female's claimed identity and run a check on her. See *Rodriguez*, 135 S. Ct. at 1616 (citing with approval cases that have recognized an officer safety justification for criminal record and outstanding warrant checks); *Gammons*, 241 Wis. 2d 296, ¶13 (holding that no constitutional violation occurred when during a traffic stop the officer asked the defendant, a passenger, for his identification and ran a check on him); see also *State v. Allen*, 779 S.E.2d 248, 257 (Ga. 2015) (noting that "courts throughout the country have held that an officer generally may reasonably inquire about the identities of persons detained at the scene of a traffic stop and take reasonable steps to quickly verify their identities and to check their criminal histories and for warrants" (citation omitted)). Coleman was not required to believe the female's claimed identity. See *State v. Nieves*, 2007 WI App 189, ¶¶13-14, 304 Wis. 2d 182, 738 N.W.2d 125.

¶17 In the meantime, while Coleman waited in his squad car for Meyer to arrive, it was reasonable for Coleman to continue detaining Paulson in his own car. See *Johnson*, 555 U.S. at 333 (stating that "[t]he temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop," and the stop "[n]ormally" ends "when the police have no further need to control the scene, and inform the driver and passengers they are free to leave"). Otherwise, under Paulson's argument, Coleman would have to return to Paulson's car in the dark of night while outnumbered and not knowing if the female was wanted for a crime or committing an ongoing crime. See *Salonen*, 338 Wis. 2d 104, ¶12 ("A passenger's motivation to employ violence 'to prevent apprehension of ... a crime' is ... 'every bit as great' as that of the driver." (quoting *Wilson*, 519 U.S. at 414. At this point, Coleman's safety was still a reasonable concern. See *Salonen*, 338 Wis. 2d 104, ¶13.

¶18 As importantly, Coleman was still making reasonable attempts to try and confirm the female's claimed identity. At 12:10 a.m., Meyer arrived at the scene. He checked the female's fingerprints with the portable fingerprint scanner but there were no results. At 12:18 a.m., in another apparent attempt to confirm the female's claimed identity, Coleman phoned her parents using her cell phone. Either this was the first time Coleman attempted to call the female's parents or it was the second time, after having first tried from the squad car, Coleman reasonably concluding that the female's parents were more likely to pick up the phone if they saw their daughter calling. At nearly the same time the female retrieved her cell phone, another officer arrived on the scene with the canine, at which point the dog indicated the presence of drugs inside Paulson's vehicle. As such, the "mission" of the seizure, and the tasks incident to that mission, such as identifying the female passenger and running her information, were still ongoing when the dog sniff occurred. The officer diligently pursued his investigation in a manner that was systematic and efficient.

¶19 Moreover, the unidentified minor was in a car with a man ten years older, after curfew, in a remote location. Her speech was slurred, she was hesitant to identify herself, nervous, and indicated her parents were unavailable. The officer had reasonable suspicion to extend the stop to investigate the curfew violation and Paulson's role in it, and, in any event, to ensure that the minor was safely returned to her home—including whether her parents would let her drive home with Paulson or the officer. See *Gammons*, 241 Wis. 2d at 306 (noting that the scope of the officer's inquiry may be broadened beyond the original purpose of the stop if additional suspicious factors come to the officer's attention). Consequently, whether because the initial seizure was still ongoing or was reasonably extended due to the minor's violation of curfew, the authority for the

seizure had not ended, and Paulson's constitutional right to be free from unreasonable seizures was not violated. *See Rodriguez*, 135 S. Ct. at 1614.⁵

¶20 Accordingly, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

⁵ In light of our holding, we do not address the State's alternative argument that there was reasonable suspicion to detain Paulson based on illegal drug activity.

